



Dated: March 24, 2006

The following is ORDERED:

A handwritten signature in black ink, reading "Tom R. Cornish", is positioned above a horizontal line.

Tom R. Cornish  
UNITED STATES BANKRUPTCY JUDGE

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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF OKLAHOMA

IN RE:	)	
	)	
<b>J. LANCE WYRICK</b>	)	Case No. 00-72862
<b>a/k/a LANCE WYRICK</b>	)	Chapter 7
<b>ANGELA S. WYRICK</b>	)	
	)	
Debtors,	)	
	)	
<b>McCURTAIN COUNTY</b>	)	
<b>NATIONAL BANK</b>	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Adv. No. 01-7029
	)	
<b>J. LANCE WYRICK</b>	)	
	)	
Defendant.	)	

**ORDER**

On the 1<sup>st</sup> day of February, 2006, the Claim for Exemption and Request for Hearing, filed by Defendant J. Lance Wyrick, came on for evidentiary hearing. Appearances were entered at the hearing

by Ross Plourde, Attorney for Plaintiff, and J. Lance Wyrick, *pro se*. After hearing and reviewing the evidence and testimony presented by the parties, this Court does hereby enter its findings and conclusions in conformity with Rule 7052, Fed. R. Bankr. P., in this core proceeding.

The Debtors filed for relief under Chapter 7 of the Bankruptcy Code on October 12, 2000. Plaintiff commenced the above-referenced adversary proceeding on April 23, 2001. A Judgment was entered January 29, 2002, and was signed by counsel for Plaintiff and Thomas B. Webb, counsel for Defendant during the pendency of the adversary proceeding. The Judgment was in favor of the Plaintiff in the amount of \$36,000.00, and was to be paid in \$200.00 monthly installments beginning March 1, 2002, for fifteen years without accruing interest.

Defendant filed his Claim for Exemption and Request for Hearing on January 26, 2006. The pleading indicates that the funds sought in garnishment by the Plaintiffs are exempt from execution due to an undue hardship on Defendant.

Defendant testified at the evidentiary hearing regarding his living and financial situation. Defendant is a public school teacher with an annual base salary of \$28,900.00. Defendant receives an additional \$2,000.00 annually for coaching duties. Defendant's spouse works in the pharmacy field, and receives approximately \$22,000.00 to \$23,000.00 annually. Defendant's net pay is \$1,640.00 per month, and his spouse has a net salary between \$1,200.00 and \$1,300.00 monthly. Debtors have three children between the ages of three and twelve. Monthly expenses include rent and utilities, two vehicle payments, and daycare expenses. In the time since the Judgment was entered, Defendant has made twenty-six payments and has missed twenty payments.

Section 1.1 of Title 31 of the Oklahoma Statutes provides in part:

A. Following the issuance of an execution, attachment, or garnishment, except process to collect a judgment or order for child support or maintenance of children or in cases in which the court has limited or reduced the application of this section pursuant to Section 142.18 of Title 21 of the Oklahoma Statutes, the debtor may file with the court an application requesting a hearing to exempt from such process by reason of undue hardship that portion of any earnings from personal services necessary for the maintenance of a family or other dependents supported wholly or partially by the labor of the debtor. A debtor with no family or other dependents may not claim an exemption under this section. A hearing on the application shall be set and conducted in the manner provided by Section 1172.2 of Title 12 of the Oklahoma Statutes and subsection D of section 1174 of Title 12 of the Oklahoma Statutes.

Okla. Stat. Ann. tit. 31 § 1.1(A) (West Supp. 2006).

Counsel for Plaintiff noted at trial that the combined gross family income is at least \$52,000.00 annually, which represents about \$1,000.00 per week. Pursuant to Section 1.3 of Title 31 of the Oklahoma Statutes, Plaintiff argues that certain income of the Defendant is not exempt from garnishment.

That Section provides:

The determination and order issued by the court pursuant to a hearing requested under Section 1.1 of this title shall not take into consideration any total gross family income which exceeds one hundred twenty times the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, U.S.C. Title 29, Section 206(a)(1) as amended and in effect at the time the earnings are payable or the equivalent for pay periods other than one (1) week. The excess amounts shall not be subject to exemption due to undue hardship.

Okla. Stat. Ann. tit. 31 § 1.3 (West Supp. 2006). As argued by Plaintiff, one hundred and twenty times the federal minimum hourly wage (\$5.15) amounts to \$618.00. The remaining amount over and above \$618.00 are not subject to exemption due to undue hardship under Section 1.3. This equates to approximately \$1,500.00 that is subject to garnishment per month. The Judgment provided for monthly payments of \$200.00, and Plaintiff's attempts to collect on its Judgment has resulted in a garnishment of approximately \$450.00 per month. Pursuant to Section 1.3, the Defendant's Claim for Exemption must be

denied.

IT IS THEREFORE ORDERED that Defendant's Claim for Exemption is **denied**.

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